Feb 22 2000

(4)

No. 99-387

Supreme Court, U.S.
FILED
FEB 22 2000
CLERK

IN THE
Supreme Court of the United States

THOMAS E. RALEIGH, Chapter 7 Trustee
for the Estate of William J. Stoecker,

Petitioner,

v.

STATE OF ILLINOIS,
DEPARTMENT OF REVENUE,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR PETITIONER

Robert Radasevich*
Two North LaSalle Street
Chicago, Illinois 60602
312-269-8000
Attorney for Petitioner

**Counsel of Record*

Of Counsel:
Phil C. Neal
David A. Eide
John W. Guarisco
Neal, Gerber & Eisenberg
Two North LaSalle Street
Chicago, IL 60602
312-269-8000

Balmar Legal Publishing Services, Washington, DC 20005 (202) 682-9829

39 pp

QUESTION PRESENTED

Should tax claims in bankruptcy cases be given the advantage of placing the burden of persuasion on an objecting trustee, in contrast to the rule applicable to the claims of other creditors?

STATEMENT PURSUANT TO RULE 24.1(B)

The caption of the case in this Court lists all parties to the proceeding in the court of appeals.

TABLE OF CONTENTS

QUESTION PRESENTED i
STATEMENT PURSUANT TO RULE 24.1(B) ii
TABLE OF AUTHORITIES iv
OPINIONS BELOW 1
JURISDICTION 2
STATUTORY PROVISIONS AND RULES INVOLVED 2
STATEMENT OF THE CASE 2
SUMMARY OF THE ARGUMENT 7
ARGUMENT 9
I. THE EVOLUTION OF THE TREATMENT OF TAX CLAIMS IN BANKRUPTCY PROCEEDINGS SUPPORTS IMPOSING THE BURDEN OF PERSUASION IN CLAIM OBJECTION PROCEEDINGS ON TAXING AUTHORITIES 9
A. PRE-CODE PRACTICE 10
B. THE BANKRUPTCY CODE OF 1978 15
II. THE *ERIE* DOCTRINE DOES NOT APPLY, AND POLICIES UNDERLYING THE BANKRUPTCY CODE MANDATE A UNIFORM ALLOCATION OF THE BURDEN OF PERSUASION IN CLAIM OBJECTION PROCEEDINGS 21
CONCLUSION 29

TABLE OF AUTHORITIES

Cases **Pages**

Alexander v. Hillman, 296 U.S. 222 (1935) 28

In re Allegheny Int'l, Inc., 954 F.2d 167 (3d Cir. 1992).....9

In re Avien, Inc., 390 F. Supp. 1335 (E.D.N.Y. 1975), *aff'd*, 32 F.2d 273 (2d Cir. 1976).....14

Begier v. Internal Revenue Service, 496 U.S. 53, 58 (1990).....26

In re Bradley, 16 F.2d 301 (S.D.N.Y. 1926) 14

Butner v. United States, 440 U.S. 48 (1979).....24, 25, 26

Citizens Bank of Maryland v. Strumpf, 516 U.S. 16 (1995).. 24-25

City of New York v. Saper, 336 U.S. 328 (1949) .11, 12, 19, 27

In re Clayton Magazines, 77 F.2d 852 (2d Cir. 1935).....15

Cohen v. De La Cruz, 523 U.S. 213 (1998).....19

Dewsnup v. Timm, 502 U.S. 410 (1992).....15

Dickinson v. Riley, 86 F.2d 385 (8th Cir. 1936) 14

Erie R. Co. v. Tompkins, 304 U.S. 64 (1938) 8, 22, 23

In re Estrada's Market, 222 F. Supp. 253 (S.D. Cal. 1963).....15

Fiori v. Rothensies, 99 F.2d 922 (3d Cir. 1938) 14

First Nat'l Bank of Louisville v. Hurricane Elkhorn Coal Corp. II, 763 F.2d 188 (6th Cir. 1985).....26

Gardner v. New Jersey, 329 U.S. 565 (1947).....13, 22, 28

In re Garfield Bag & Stationery Co., 42 F. Supp. 708 (S.D.N.Y. 1941).....15

In re Glotzer, 42 F. Supp. 712 (S.D.N.Y. 1941).....15

In re Gorgeous Blouse Co., 106 F. Supp. 465 (S.D.N.Y. 1952) 14

Granfinanciera, S.A. v. Nordberg, 492 U.S. 33 (1989) ...22, 28

Grogan v. Garner, 498 U.S. 279 (1991).....24

Cases **Pages**

In re Harrison, 987 F.2d 677 (10th Cir. 1993) 9

Heiser v. Woodruff, 327 U.S. 726 (1946) 24

In re Highway Constr. Co. of Ohio, 105 F.2d 863 (6th Cir. 1939) 14

Katchen v. Landy, 382 U.S. 323 (1966).....21, 22, 28

In re Koscot Interplanetary, Inc., 1977-2 U.S. Tax Cas. (CCH) ¶ 9497 (M.D. Fla. 1977).....15

In re Lang Body Co., 92 F.2d 338 (6th Cir. 1937).....15

Langenkamp v. Culp, 498 U.S. 42 (1990).....28

Lesser v. Gray, 236 U.S. 70 (1915) 28

Local Loan Co. v. Hunt, 292 U.S. 234 (1934).....22, 24, 28

Midlantic Nat'l Bank v. New Jersey Dep't of Envtl. Prot., 474 U.S. 494 (1986).....19

New Jersey v. Anderson, 203 U.S. 483 (1906) 10

New York v. Irving Trust Co., 288 U.S. 329 (1933) 10, 28

Nicholas v. United States, 384 U.S. 678 (1966) ..10, 12, 19, 27

In re Oxford Assocs., 209 F. Supp. 242 (D.N.J. 1962) 15

In re Paolino, 53 B.R. 399 (Bankr. E.D. Pa. 1985), *aff'd*, 60 B.R. 828 (E.D. Pa. 1986) 27

Paschal v. Blieden, 127 F.2d 398 (8th Cir. 1942).....15

Pennsylvania Dept. of Public Welfare v. Davenport, 495 U.S. 552 (1990).....19

In re Placid Oil Co., 988 F.2d 554 (5th Cir. 1993).....9

Psaty v. United States, 442 F.2d 1154 (3rd Cir. 1971) 27

In re Raflowitz, 37 F. Supp. 202 (D. Conn. 1941) 15

In re Schimmelpenninck, 183 F. 3d 347 (5th Cir. 1999).. 26-27

Matter of Seafarer Fiber Glass Yachts, Inc., 475 F. Supp. 1097 (E.D.N.Y. 1979).....14

Cases **Pages**

In re Slodov, 1975-2 U.S. Tax Cas. (CCH) ¶ 9829 (N.D. Ohio 1975), *rev'd on other grounds sub nom. Slodov v. United States*, 552 F.2d 159 (6th Cir. 1977), *rev'd*, 436 U.S. 238 (1978) 14

In re Transamerican Natural Gas Corp., 978 F.2d 1409 (5th Cir. 1992) 9

Matter of Uneco, Inc., 532 F.2d 1204 (8th Cir. 1976) 15

Union Bank v. Wolas, 502 U.S. 151 (1991) 26

United Savs. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365 (1988) 19

United States v. Energy Resources Co., 495 U.S. 545 (1990) 18

United States v. Noland, 517 U.S. 535 (1996) 25

United States v. Reorganized CF & I Fabricators of Utah, Inc., 518 U.S. 213 (1996) 25

United States v. Ron Pair Enterprises, Inc., 489 U.S. 235 (1989) 20, 28, 29

United States v. Sampsell, 224 F.2d 721 (9th Cir. 1955) 13

United States v. Whiting Pools, Inc., 462 U.S. 198 (1983) 18, 20, 25

Vanston Bondholders Protective Comm. v. Green, 329 U.S. 156 (1946) 22-24, 26, 29

Watson v. Thompson, 456 F. Supp. 432 (S.D. Ga. 1978) 14

Whitney v. Dresser, 200 U.S. 532 (1906) 12-13

In re Wilhelm, 173 B.R. 398 (Bankr. E.D. Wis. 1994) 27

Wiswall v. Campbell, 93 U.S. 347 (1876) 21, 28

In re Wolslagel, 104 F. Supp. 68 (N.D. Ohio 1952) 14-15

Young v. Higbee Co., 324 U.S. 204 (1945) 26

Pages

Statutes

11 U.S.C. § 35 (repealed 1979) 12

11 U.S.C. § 93 (repealed 1979) 10, 11, 12

11 U.S.C. § 104 (repealed 1979) 10, 11, 12

11 U.S.C. § 341 4

11 U.S.C. § 362(g) 18

11 U.S.C. § 363(e) 18

11 U.S.C. § 363(o) 18

11 U.S.C. § 364(d)(2) 18

11 U.S.C. § 501(a) 15

11 U.S.C. § 502 ..... *passim*

11 U.S.C. § 502(a) 4, 9, 15, 22

11 U.S.C. § 506(b) 20

11 U.S.C. § 507(a) 16

11 U.S.C. § 507(a)(6) 18

11 U.S.C. § 507(a)(7)(E) 25

11 U.S.C. § 523(a) 24

11 U.S.C. § 523(a)(1) 16, 18, 28

11 U.S.C. § 547(g) 18

11 U.S.C. § 727(a)(3) 27

11 U.S.C. § 727(a)(4)(D) 27

11 U.S.C. § 1104 27

11 U.S.C. § 1104(a)(1) 27

11 U.S.C. § 1129(a)(1)(C) 16

11 U.S.C. § 1129(d) 16, 18

Pages

26 U.S.C. § 4971(a) 25

26 U.S.C. § 6672 7

28 U.S.C. § 157(b)(2)(B) 28

28 U.S.C. § 1254(1) 2

44 Stat. 662, 666-67 (1926) (codified as amended at 11 U.S.C. § 104) 10

52 Stat. 840, 867 (1938) (codified as amended at 11 U.S.C. § 93n) 11

52 Stat. 840, 874 (1938) (codified as amended at 11 U.S.C. § 104a) 11

74 Stat. 217 (1960) (codified as amended at 11 U.S.C. § 93a) 13

Ill. Rev. Stat., ch. 120, ¶ 439.1 *et seq.* (1989) (re-codified at 35 ILCS 105/1 *et seq.*) 5

Ill. Rev. Stat., ch. 120, ¶ 439.12 (1989) (re-codified at 35 ILCS 105/12) 5

Ill. Rev. Stat., ch. 120, ¶ 440 *et seq.* (1989) (re-codified at 35 ILCS 120/1 *et seq.*) 5

Ill. Rev. Stat., ch. 120, ¶ 452 ½ (1989) (re-codified at 35 ILCS 120/13.5 5

Rules

Federal Rule of Bankruptcy Procedure Rule 301(b) (repealed 1983) 13, 17

Federal Rule of Bankruptcy Procedure Rule 3001(f) 6, 9, 17

Federal Rule of Bankruptcy Procedure Rule 3007 6

Legislative History

H.R. Rep. No. 95-595 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963 ..... 17, 26

S. Rep. No. 1916, 75th Cong., 3d Sess. (1938) 11

Pages

S. Rep. No. 95-989 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787 ..... 16, 17, 19

S. Rep. No. 95-1106 (1978), *reprinted in* 3 App. J. Moore & L. King, *Collier on Bankruptcy* at Tab VI (15th ed. 1994) 18

Treatises

3A J. Moore & L. King, *Collier on Bankruptcy* (14th ed. 1975) 15

9 J. Wigmore, *Evidence in Trials at Common Law* (rev. ed. 1981) 26

No. 99-387

IN THE

Supreme Court of the United States

THOMAS E. RALEIGH, Chapter 7 Trustee
for the Estate of William J. Stoecker,

Petitioner,

v.

STATE OF ILLINOIS,
DEPARTMENT OF REVENUE,

Respondent.

**ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

BRIEF FOR PETITIONER

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-13)[1] is reported at 179 F.3d 546. The memorandum opinion and order of the district court (Pet. App. B1-21) is unreported. The memorandum opinion of the bankruptcy court (Pet. App. C1-82) is reported at 202 B.R. 429. Earlier related opinions of the district court (Pet. App. D1-30) and the bankruptcy court (Pet. App.E1-40) are reported at 179 B.R. 532 and 151 B.R. 689, respectively.

[1] "Pet. App." refers to the Appendices to the Petition for a Writ of Certiorari.

JURISDICTION

The judgment of the court of appeals was entered on June 2, 1999. The petition for a writ of certiorari was filed on August 31, 1999. The petition was granted on January 7, 2000. The jurisdiction of this Court arises under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS AND RULES INVOLVED

United States Code, Title 11:

§ 501. Filing of proofs of claims or interests.

(a) A creditor or an indenture trustee may file a proof of claim. An equity security holder may file a proof of interest.

§ 502. Allowance of claims or interests.

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

Federal Rules of Bankruptcy Procedure:

Rule 3001. Proof of Claim.

(f) Evidentiary Effect. A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

STATEMENT OF THE CASE

Petitioner Thomas E. Raleigh is the Chapter 7 trustee (the "Trustee") for the bankruptcy estate of William J. Stoecker ("Stoecker"). This case involves the Trustee's objection to the allowance of a proof of claim filed by the State of Illinois, Department of Revenue (the "Department")

arising from the failure of a corporation of which Stoecker was an officer to pay use taxes on the purchase of an airplane.

Stoecker was the president and a director of Chandler Enterprises, Inc. ("Chandler"), an Illinois corporation located in Oak Forest, Illinois. (Pet. App. B2 and C15.) In June, 1988, Chandler entered into a "Lease Purchase Agreement" with Prewitt Leasing, Inc. ("Prewitt Leasing"), a company located in Texas, for a Falcon 50 airplane. (Pet. App. C15.) Chandler subsequently exercised its purchase option and acquired title to the airplane on September 30, 1988.[2] (Pet. App. E4.) Chandler then leased the airplane to Grabill Corporation, another Illinois corporation of which Stoecker was president and sole shareholder. (Pet. App. D3.)

Chandler's purchase of the airplane was financed by NEMLC Leasing Corporation ("NEMLC") of Boston, Massachusetts. (Pet. App. C16.) NEMLC requested that Chandler provide an opinion of counsel relating to the tax ramifications of Chandler's purchase of the airplane. John Anderson ("Anderson"), an attorney with the Chicago law firm of Lord Bissell & Brook who acted as counsel for both Chandler and Grabill, issued an opinion letter dated September 30, 1988 in which he opined that Chandler's purchase of the airplane did not give rise to sales or use tax liability under Illinois law because it constituted an "occasional sale" exempt from such tax. (Pet. App. C16-17.) Anderson's conclusion was supported by a "Certificate Re Occasional Seller Exemption from Illinois Sales and Use

---

[2] Title documents for the airplane indicate that, on May 30, 1988, Opex Aviation, Inc. ("Opex") had acquired title from Bezwada Investments, Inc., an Australian company. (Pet. App. C16.) On June 1, 1988, Opex transferred title to the airplane to Jack Prewitt & Associates ("Jack Prewitt"). (Pet. App. E4.) The transfer of title from Opex to Jack Prewitt on June 1, 1988 was inadvertent in that the parties had intended to transfer title from Opex to Prewitt Leasing. Thus, on September 30, 1988, Jack Prewitt transferred title to the airplane to Prewitt Leasing to enable Prewitt Leasing to transfer title to Chandler that same day. (Pet. App. C16, 40.)

Tax" (the "Certificate") from Prewitt Leasing dated September 30, 1988. (Pet. App. C17.) In the Certificate, Prewitt Leasing represented that it was in the business of leasing aircraft and, prior to the sale to Chandler, had sold only one other aircraft. (Pet. App. C41.) Chandler did not seek a private letter ruling from the Department regarding the tax consequences of its purchase (Pet. App. C17), and neither Chandler nor Prewitt Leasing paid any Illinois sales or use taxes on Chandler's purchase of the airplane. (Pet. App. C16.)

Although incorporated in Illinois, Chandler did not register with the Department and never filed state tax returns. Likewise, although the airplane was based in Illinois, Chandler did not register the airplane with the Illinois Department of Transportation. (Pet. App. C18.) Chandler was involuntarily dissolved by the Illinois Secretary of State on June 1, 1990. (Pet. App. D3.)

On February 21, 1989, an involuntary petition under Chapter 11 was filed against Stoecker. On March 20, 1989, Thomas E. Raleigh was appointed Chapter 11 trustee. The case was converted to Chapter 7 on February 26, 1990, and Raleigh became Chapter 7 trustee. (Pet. App. E2.)

While the case was still in Chapter 11, the Department filed three proofs of claim (and one amended claim) in the estate totaling $14,219.24. Those proofs of claim sought withholding taxes and Retailers' Occupation/Use Taxes allegedly owed by Stoecker as a responsible officer of two other corporations, The Cook's Cupboard and Eagle Line, Inc. No objections were filed to those claims, and they were deemed allowed under 11 U.S.C. § 502(a). (Pet. App. E3.) The Department did not file any claims relating to Chandler prior to conversion.

After conversion to Chapter 7, the bankruptcy court issued an order providing, *inter alia*, that all proofs of claim were to be filed within ninety days of the March 28, 1990 meeting of creditors under 11 U.S.C. § 341. (Pet. App. E2.)

The Department did not file a proof of claim relating to Chandler prior to the June 26, 1990 bar date. (Pet. App. E3.)

In March 1990, Mark Russell ("Russell"), an employee of the Department's audit division, received a commercially prepared report of various aircraft purchases. That report showed Chandler's purchase of the airplane in September, 1988. Based on the purchase price of the airplane, the Department determined that Chandler owed use taxes[3] totaling $836,000. After several letters to Chandler went unanswered, the Department issued a Notice of Tax Liability to Chandler in September 1990 for the unpaid use taxes. (Pet. App. C18-19.)

In June 1990, Russell learned through inquiries with the Illinois Secretary of State's office that Stoecker was an officer and director of Chandler and, thus, potentially liable for the use tax obligation as a "responsible officer" who "willfully" failed to pay the tax.[4] (Pet. App. C17-19.) After several unsuccessful attempts to contact Stoecker, the Department issued a Notice of Penalty Liability ("NPL") to Stoecker in June 1991 assessing a penalty against Stoecker equal to the amount of Chandler's unpaid use tax obligation. (Pet. App. C19.) Several months later, in January 1992, the Department's notice of penalty liability section learned that Stoecker was in bankruptcy, and the Department filed a proof

---

[3] "Sales" taxes under Illinois law have two components. The Retailers' Occupation Tax Act imposes a tax on those engaged in the business of selling personal property at retail. Ill. Rev. Stat., ch. 120, ¶ 440 *et. seq.* (1989) (re-codified at 35 ILCS 120/1 *et seq.* (1992)). The Use Tax Act imposes a tax on Illinois residents who buy personal property from out-of-state sellers. Ill. Rev. Stat., ch. 120, ¶ 439.1 *et. seq.* (1989) (re-codified at 35 ILCS 105/1 *et seq.* (1992)).

[4] *See* Ill. Rev. Stat., ch. 120, ¶ 452 ½ (1989) (re-codified at 35 ILCS 120/13.5 (repealed 1994)). This provision of the Retailers' Occupation Tax Act was incorporated into the Use Tax Act pursuant to Ill. Rev. Stat., ch. 120, ¶ 439.12 (1989) (re-codified at 35 ILCS 105/12 (1992)). Effective January 1, 1994, 35 ILCS 120/13.5 was repealed, and "responsible officer liability" was re-codified at 35 ILCS 735/3-7 (1996).

of claim asserting a priority claim in the amount of approximately $1,476,000, later reduced by the Department to $917,000. (Pet. App. C20 and n.12.) The basis for the Department's priority claim was the NPL issued to Stoecker as a "responsible officer" who "willfully" failed to pay the use taxes allegedly owed by Chandler.

Pursuant to 11 U.S.C. § 502 and Rule 3007 of the Federal Rules of Bankruptcy Procedure, the Trustee filed an objection to the Department's proof of claim. (Pet. App. C22.) The Trustee argued, *inter alia*, that under Illinois law, Stoecker was not a "responsible officer" and did not "willfully" fail to file a return or remit the use tax owed by Chandler. Between 1992 and 1997, there were extensive proceedings in the bankruptcy and district courts -- including evidentiary hearings -- resulting in a number of published and unpublished opinions. (Pet. App. B, C, D, and E). The bankruptcy court ruled that under Federal Rule of Bankruptcy Procedure 3001(f), the Department's proof of claim was *prima facie* evidence of the validity and amount of that claim. The bankruptcy court determined that, if the Trustee successfully rebutted that *prima facie* evidence, the burden of persuasion remained with the Department – as with any other creditor in a bankruptcy proceeding – to prove its claim by a preponderance of the evidence. (Pet. App. C5.)

The bankruptcy court ultimately held, *inter alia*, that the Trustee successfully rebutted the *prima facie* validity of the Department's proof of claim and that the Department failed to satisfy its burden of persuasion to prove its claim by a preponderance of the evidence. (Pet. App. C73-74.) Accordingly, the bankruptcy court sustained the Trustee's objection. (Pet. App. C81.) The Department filed a timely notice of appeal to the district court. (Pet. App. B4.)

After subjecting the bankruptcy court's allocation of the burden of persuasion to *de novo* review, the district court concurred that the burden of persuasion rested with the Department. Because the Department had produced no evidence beyond the NPL itself and the records of the Illinois

Secretary of State listing Stoecker as an officer and director of Chandler, the district court held that the bankruptcy court's decision that the Department had failed to prove its claim by a preponderance of the evidence was not clearly erroneous and, therefore, affirmed. (Pet. App. B.) The Department filed a timely notice of appeal to the court of appeals for the seventh circuit. (Pet. App. A2.)

The court of appeals reversed on the ground that the burden of proof under non-bankruptcy law controlled in claim objection proceedings in bankruptcy court. The court of appeals determined that, "just as under the corresponding federal law of responsible-officer liability for unpaid taxes, 26 U.S.C. § 6672; ... Illinois shifts the burden of proof — both production and persuasion — to the officer once a Notice of Penalty Liability is issued...." (Pet. App. A7.) The court of appeals rejected the rulings of the lower courts and the argument of the Trustee that, in a claim objection proceeding in a bankruptcy case, the Department, as creditor, bears the burden of persuasion to prove its claim by a preponderance of the evidence. The court of appeals found "no indication" in the Bankruptcy Code that Congress intended that bankruptcy courts employ a burden of persuasion for tax claims that was different from that arising under state law. (Pet. App. A11.) Finding that the evidence offered by the Trustee — while perhaps sufficient to satisfy the burden of production — was not sufficient to sustain the Trustee's burden of persuasion, the court of appeals reversed the district court's decision and found that the Department had a valid claim. (Pet. App. A7, 12.)

SUMMARY OF THE ARGUMENT

The issue in this case is whether the State of Illinois, Department of Revenue, as creditor, or the bankruptcy trustee, as objecting party, should bear the burden of persuasion on the allowance of a tax claim in a bankruptcy proceeding when under state law, the burden of persuasion rests with the taxpayer to disprove liability for the tax. The Bankruptcy

Code of 1978, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code" or the "Code"), is silent on the allocation of the burden of persuasion in claim objection proceedings. The Federal Rules of Bankruptcy Procedure, while addressing the initial burden of production, likewise do not address the burden of persuasion.

The court of appeals held that burdens of persuasion are part of a state's substantive law, and, because Congress had not specifically addressed burdens of persuasion in claim objection proceedings, state law burdens of persuasion govern. The court of appeals found that, outside of bankruptcy, Stoecker would have had the burden of persuasion under Illinois law to disprove his responsible officer liability, and thus the Trustee, rather than the Department, bore the burden of persuasion on the Trustee's objection to allowance of the Department's claim in the bankruptcy case. This conclusion ignores pre-Code practice and the legislative history of the Code, misapplies the Court's decision in *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938), and depreciates the policy and equitable considerations supporting a uniform allocation to all creditors of the burden of persuasion in claim objection proceedings.

Since the passage of the Chandler Act in 1938, tax claims have been treated like any other claims in bankruptcy proceedings. The policies supporting imposition of the burden of persuasion on taxpayers in typical state or federal court litigation have little if any application in a bankruptcy proceeding where the fight is not between the taxing authority and the taxpayer, but between the taxing authority and all of the other creditors of the taxpayer as they vie for their fair share of a limited pool of assets. Having chosen to file a proof of claim in the bankruptcy proceeding, the Department should be governed by the same rules as any other creditor, including the burden of persuasion to prove its claim by a preponderance of the evidence.

ARGUMENT

I.

THE EVOLUTION OF THE TREATMENT OF TAX CLAIMS IN BANKRUPTCY PROCEEDINGS SUPPORTS IMPOSING THE BURDEN OF PERSUASION IN CLAIM OBJECTION PROCEEDINGS ON TAXING AUTHORITIES

The typical procedure in claim objection proceedings in bankruptcy is that the creditor bears the burden of persuasion to prove its claim. *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 175 (3d Cir. 1992); *In re Harrison*, 987 F.2d 677, 680 (10th Cir. 1993). A properly filed proof of claim is *prima facie* evidence of the validity and the amount of the claim. Fed. R. Bankr. P. 3001(f). In the absence of an objection, the proof of claim is deemed allowed. 11 U.S.C. § 502(a). If an objection is lodged, the objector has the burden of production to introduce evidence rebutting the *prima facie* validity of the claim. *Allegheny*, 954 F.2d at 173. A mere denial of the claim does not rebut the presumption of validity, *In re Transamerican Natural Gas Corp.*, 978 F.2d 1409, 1416 (5th Cir. 1992), and if the objector's evidence is otherwise insufficient to rebut the evidence supporting the proof of claim, the claim will be allowed. If, on the other hand, the bankruptcy court finds that the objector has successfully rebutted the *prima facie* validity of the claim, the claimant must sustain the burden of persuasion to prove its claim. *In re Placid Oil Co.*, 988 F.2d 554, 557 (5th Cir. 1993). The bankruptcy court's factual findings are reviewed on a "clearly erroneous" basis. *Id.*

The Department argues that it does not bear the burden of persuasion in claim objection proceedings. The Department contends that bankruptcy courts are required to apply burdens of persuasion created under state substantive tax laws. Because, under Illinois substantive tax law, the

burden of persuasion to disprove tax liability is on the taxpayer, the Department contends that the burden of persuasion should be on the bankruptcy trustee to disprove the Department's tax claim.

An analysis of the evolution of the treatment of tax claims in bankruptcy proceedings indicates that taxing authorities should bear the same burden of persuasion as that borne by all other creditors in claim objection proceedings. The overwhelming majority of pre-Code decisions placed the burden of persuasion on taxing authorities, and there is nothing in the legislative history or the language of the Code itself to indicate that Congress intended to change that practice.

A.

Pre-Code Practice

The treatment of state and federal tax claims in bankruptcy proceedings has evolved since the passage of the Bankruptcy Act of 1898 (the "Bankruptcy Act" or the "Act"). Under the Bankruptcy Act as originally enacted, tax claims were not treated as claims against the estate, but rather as obligations of the debtor that had to be paid ahead of the debtor's traditional debts. *New Jersey v. Anderson*, 203 U.S. 483, 492 (1906). Tax claims were not required to be filed or proved under section 57 of the Bankruptcy Act, 11 U.S.C. § 93, and section 64 of the Bankruptcy Act, 11 U.S.C. § 104, required the bankruptcy trustee to seek out, determine, and pay all taxes legally due and owing. *Nicholas v. United States*, 384 U.S. 678, 682 n.10 (1966). The bankruptcy court could, however, establish a bar date for all claims, including tax claims, and tax claims not filed by that date were disallowed. *New York v. Irving Trust Co.*, 288 U.S. 329, 331 (1933).

The privileged status of tax claims began to erode in 1926 when Congress amended section 64 of the Bankruptcy Act to reduce tax claims to a priority status behind administrative claims and certain wage claims. 44 Stat. 662, 666-67 (1926) (codified as amended at 11 U.S.C. § 104).

Still, in the absence of a court-ordered bar date, there was no specific requirement for filing or proving tax claims.

The Chandler Act of 1938, 52 Stat. 840, significantly altered the treatment of tax claims in bankruptcy. For the first time, governmental claims, including tax claims, were required to be filed and proved:

> all claims provable under this Act, including all claims of the United States and of any State or subdivision thereof, shall be proved and filed in the manner provided in this section.

52 Stat. 840, 867, (1938) (codified as amended at 11 U.S.C. § 93n). Tax claims were also classified as fourth-tier priority claims. 52 Stat. 840, 874 (codified as amended at 11 U.S.C. § 104a). Because of the difficulties that governmental entities often encountered in preparing and filing claims within the time allotted for other creditors, the Chandler Act amended section 57n of the Bankruptcy Act to enable governmental entities to request extensions of the filing deadline. *Id.*; S. Rep. No. 1916, 75th Cong., 3d Sess., at 5 (1938). Apart from the ability to request extensions of time to file claims, however, the legislative history of the Chandler Act indicates that Congress intended that "governmental claims should be subjected to the same requirements as other claims". S. Rep. No. 1916, 75th Cong., 3d Sess., at 5 (1938).

The Court's decisions following enactment of the Chandler Act were consistent with the stated intention of Congress as set forth in the legislative history that tax claims should be treated no differently from other claims. In *City of New York v. Saper*, 336 U.S. 328 (1949), for example, the Court considered whether tax claims should bear interest only until the date of the bankruptcy or until payment. The Court noted that nothing in the Bankruptcy Act expressly "permitt[ed] post-bankruptcy interest on other claims in general or tax claims in particular." *Id.* at 331. Emphasizing the Chandler Act's sweeping amendments to the Bankruptcy Act, the Court held that there was no basis for treating tax

claims differently from any other claims with respect to the disallowance of post-petition interest:

> Section 57, sub. n, 11 U.S.C. § 93, sub. n, 11 U.S.C.A. § 93, sub. n, requires governmental claims to be proved in the same manner and within the same time as other debts and only for cause shown may a reasonable extension be granted. Tax claims are treated the same as other debts except for the fourth priority of payment, § 64, sub. a, 11 U.S.C. § 104, sub. a, 11 U.S.C.A. § 104, sub. a, and the provision making taxes nondischargeable, § 17, 11 U.S.C. § 35, 11 U.S.C.A. § 35.
>
> The Court of Appeals concluded that by the 1926 amendment and the Chandler Act, Congress assimilated taxes to other debts for all purposes, including denial of post-bankruptcy interest. We think this is a sound and logical interpretation of the Act after those amendments to §§ 64, sub. a, and 57, sub. n.

Id. at 332, 337-38. *See also Nicholas v. United States*, 384 U.S. 678, 682 n.10 (1966) (*Saper* "reflected an assimilation of tax debts to the status of other debts in bankruptcy.... [I]n the light of these amendments, tax debts had become sufficiently clothed with the characteristics of other bankruptcy debts to justify the application of the general rule in *Sexton* to suspend the accrual of interest on such claims on the date the petition in bankruptcy was filed.").

The Bankruptcy Act as originally enacted did not address the allocation of the burden of production or the burden of persuasion in claim objection proceedings. Shortly after the Act was passed, the Court in *Whitney v. Dresser*, 200 U.S. 532 (1906), in an opinion by Justice Holmes, held that a properly filed proof of claim was *prima facie* evidence of the matters therein alleged:

> The only question warranting the appeal is whether the sworn proof of claim is prima facie evidence of its allegations in case it is objected to. It is not a question of the burden of proof in a technical sense, — a burden which does not change, whatever the state of the evidence, — but simply whether the sworn proof is evidence at all. ... We believe that the understanding of the profession, the words of the act, and convenient and just administration, all are on the side of treating a sworn proof of claim as some evidence, even when it is denied.

Id. at 534-36. *See also Gardner v. New Jersey*, 329 U.S. 565, 573 (1947) ("A proof of claim is, of course, prima facie evidence of its validity.").

In 1960, Congress codified *Whitney* and amended section 57a of the Bankruptcy Act to provide that "[a] proof of claim filed in accordance with the requirements of the Bankruptcy Act, the General Orders of the Supreme Court, and the official forms, even though not verified under oath, shall constitute prima facie evidence of the validity and amount of the claim." Pub. L. No. 86-519, 74 Stat. 217 (1960) (codified as amended at 11 U.S.C. § 93a). The *prima facie* evidentiary effect of a properly filed proof of claim was subsequently incorporated into Bankruptcy Rule 301(b): "(b) *Evidentiary Effect.* A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim."

Against this legislative framework and the Court's decisions regarding the treatment to be afforded tax claims in bankruptcy, the vast majority of lower courts adjudicating objections to tax claims under the Bankruptcy Act imposed the same burden of persuasion on taxing authorities that was imposed on other creditors. Irrespective of the burden of persuasion under state or federal tax laws, these courts held that the burden of persuasion remained with the taxing authorities as creditors to establish their tax claims. *See, e.g., United States v. Sampsell*, 224 F.2d 721, 722–23 (9th Cir. 1955) ("In this connection we quote from 3 Collier on Bankruptcy, 3d ed. p. 2173: '... a sworn proof of a tax claim in proper form establishes a prima facie case for the

allowance of the claim. The burden of proof is on the claimant, but the burden of going forward and introducing evidence to rebut the prima facie case is on the objecting party.'"); *In re Bradley*, 16 F.2d 301, 302 (S.D.N.Y. 1926) ("The filing of the sworn proofs of claims by the city [for taxes] amounted to prima facie cases, and no additional proof was required to be produced, unless some evidence contradicting it was produced by the objector."); *In re Avien, Inc.*, 390 F. Supp. 1335, 1341-42 (E.D.N.Y. 1975) ("While the burden of proof with respect to deductions claimed is normally on the taxpayer [citations omitted], that is not the case in bankruptcy proceedings where the burden of establishing its claim rests on the government.... The government is aided, however, by a strong presumption which arises in its favor by the filing of a sworn proof of claim; a *prima facie* case is established and the burden of going forward with rebutting evidence is on the debtor....The ultimate burden of persuasion remains on the government."), *aff'd*, 532 F.2d 273 (2d Cir. 1976); *Matter of Seafarer Fiber Glass Yachts, Inc.*, 475 F. Supp. 1097, 1099 (E.D.N.Y. 1979) (quoting *Avien* with approval); *Watson v. Thompson*, 456 F. Supp. 432, 435 (S.D. Ga. 1978) ("The introduction by the Government of its claim in the instant case shifted to the [debtors] the burden of rebutting its correctness. Of course, the ultimate burden of persuasion remains with the United States."); *In re Gorgeous Blouse Co.*, 106 F. Supp. 465, 465 (S.D.N.Y. 1952) ("There is no doubt that the burden of establishing the claim rests upon the Government."); *In re Slodov*, 1975-2 U.S. Tax Cas. (CCH) ¶ 9829, at 88,653 (N.D. Ohio 1975) ("The Court finds that the burden of proof is properly placed on the Government when it seeks to collect a tax. The assessment of taxes is sufficient to establish a prima facie case forcing the debtor to go forward with evidence to rebut, but the United States as a claimant seeks [sic] to collect taxes has the burden of proof."), *rev'd on other grounds sub. nom. Slodov. v. United States*, 552 F.2d 159 (6th Cir. 1977), *rev'd*, 436 U.S. 238 (1978); *Fiori v. Rothensies*, 99 F.2d 922, 922 (3d Cir. 1938); *Dickinson v. Riley*, 86 F.2d

385, 387-88 (8th Cir. 1936); *In re Highway Constr. Co. of Ohio*, 105 F.2d 863, 866 (6th Cir. 1939); *In re Wolslagel*, 104 F. Supp. 68, 76-77 (N.D. Ohio 1952); *In re Estrada's Market*, 222 F. Supp. 253, 255 (S.D. Cal. 1963); *In re Clayton Magazines*, 77 F.2d 852, 854 (2d Cir. 1935); *In re Koscot Interplanetary, Inc.*, 1977-2 U.S. Tax Cas. (CCH) ¶ 9497, at 87,620 (M.D. Fla. 1977). *See also* 3A J. Moore & L. King, *Collier on Bankruptcy*, ¶ 64.409 at 2244-45 (14th Ed. 1975) ("As in the case of other types of claims, a filed proof of a tax claim in proper form establishes a *prima facie* case for the allowance of the claim. The burden of proof is on the claimant, but the burden of going forward and introducing evidence to rebut the *prima facie* case is on the objecting party.").[5]

B.

The Bankruptcy Code of 1978

The Bankruptcy Code enacted in 1978, like the Bankruptcy Act of 1898, contains no specific provisions addressing the allocation of the burden of persuasion in claim objection proceedings.[6] In drafting the Bankruptcy Code,

---

[5] A small minority of cases placed the burden of persuasion on the taxpayer/debtor. *E.g.*, *Paschal v. Blieden*, 127 F.2d 398, 401-02 (8th Cir. 1942); *In re Oxford Assocs.*, 209 F. Supp 242, 243-44 (D.N.J. 1962); *Matter of Uneco, Inc.*, 532 F.2d 1204, 1207 (8th Cir. 1976); *In re Lang Body Co.*, 92 F.2d 338, 341 (6th Cir. 1937); *In re Raflowitz*, 37 F. Supp. 202, 207 (D. Conn. 1941). Cases such as *In re Garfield Bag & Stationery Co.*, 42 F. Supp. 708, 710-11 (S.D.N.Y. 1941), and *In re Glotzer*, 42 F. Supp. 712, 713 (S.D.N.Y. 1941), required the objecting party to rebut the presumptive validity of tax assessment claims by clear and convincing evidence.

[6] Section 501(a) provides that "[a] creditor or an indenture trustee may file a proof of claim. An equity security holder may file a proof of interest." 11 U.S.C. § 501(a). Section 502(a) provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner

however, Congress was not writing on a clean slate, *Dewsnup v. Timm*, 502 U.S. 410, 419 (1992), and was presumably aware of the prevailing judicial construction of the Bankruptcy Act that placed the burden of persuasion on taxing authorities. The legislative history of the Bankruptcy Code evidences that Congress was also aware of the tension between taxing authorities, other creditors, and the debtor and the need to balance those competing interests:

> The bill contains a series of provisions dealing with the priority, discharge, and collection of tax claims in bankruptcy. The writing of provisions dealing with the collection of taxes, at the Federal, State, and local levels has presented one of the most difficult problems for the committee. In a broad sense, the goals of rehabilitating debtors and giving equal treatment to private voluntary creditors must be balanced with the interests of governmental tax authorities who, if unpaid taxes exist, are also creditors in the proceeding.

S. Rep. No. 95-989, at 13-14 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5799-5800. The legislative history indicates that, in drafting the Bankruptcy Code, Congress attempted to balance the

> three-way tension ... among (1) general creditors, who should not have the funds available for payment of debts exhausted by an excessive accumulation of taxes for past years; (2) the debtor, whose "fresh start" should likewise not be burdened with such an accumulation; and (3) the tax collector, who should not lose taxes which he has not had reasonable time to collect or which the law has restrained him from collecting.

Id.

---

in a partnership that is a debtor in a case under chapter 7 of this title, objects." 11 U.S.C. § 502(a).

In "balanc[ing] [those] interests", Congress gave taxing authorities a priority for most tax claims, 11 U.S.C. § 507(a), and provided that priority and certain other tax claims were non-dischargeable, 11 U.S.C. § 523(a)(1). *Id.* Congress also gave tax claims special treatment in the context of plan confirmation. 11 U.S.C. §§ 1129(a)(1)(C) and 1129(d). Congress inserted various other provisions in the Bankruptcy Code (and declined to include others[7]) in order to "minimize the administrative problems governmental tax authorities face, or may face, in collecting taxes in bankruptcy proceedings." S. Rep. No. 95-989, at 14-15 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5800-01.

Although the Bankruptcy Code contains no specific provisions addressing the burden of persuasion in claim objection proceedings, the legislative history suggests that Congress did not intend to deviate from the established pre-Code practice of placing the burden of persuasion on all creditors, including taxing authorities. Comments in both the Senate and House Reports discuss claim objection proceedings in terms that mimic the practice under the Act:

> A proof of claim or interest is prima facie evidence of the claim or interest. Thus, it is allowed under subsection (a) [of section 502] unless a party in interest objects.... The burden of proof on the issue of allowance is left to the Rules of Bankruptcy Procedure.

H.R. Rep. No. 95-595, at 352 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6308; S. Rep. No. 95-989, at 62 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5848. Federal Rule of Bankruptcy Procedure 3001(f), prescribed by this Court in

---

[7] The Senate bill rejected a provision found in the House bill which would have required a taxing authority to file a proof of claim for taxes arising out of a taxable sale made by a bankruptcy trustee, "since in these situations, the trustee has better knowledge than the tax authority of the existence of such a liability for taxes." S. Rep. No. 95-989, at 15 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5801.

1983, restates verbatim former Rule 301(b): "*(f) Evidentiary Effect.* A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f).

Thus, although Congress did numerous things in the Bankruptcy Code to give preferential treatment to taxing authorities, one thing it did not do — and, the legislative history suggests, consciously chose not to do — was provide an exception for taxing authorities to the general rules regarding burdens of persuasion in claim objection proceedings. Congress' inclusion of specific burdens of persuasion in other parts of the Bankruptcy Code (*e.g.*, 11 U.S.C. §§ 362(g), 363(o), 364(d)(2), 547(g), 1129(a)(9)(C) and 1129(d)) supports the conclusion that Congress did not intend for taxing authorities to benefit from an exception to the general burdens of persuasion applicable to all other creditors in claim objection proceedings. In *United States v. Whiting Pools, Inc.*, 462 U.S. 198 (1983), the Court discussed the special treatment — and the absence of special treatment — given to tax claims by Congress in the Code:

> Congress carefully considered the effect of the new Bankruptcy Code on tax collection, see generally S. Rep. No. 95-1106 (1978) (Report of Senate Finance Committee), and decided to provide protection to tax collectors, such as the IRS, through grants of enhanced priorities for unsecured tax claims, § 507(a)(6), and by the nondischarge of tax liabilities, § 523(a)(1). S. Rep. No. 95-989, pp. 14-15 (1978). Tax collectors also enjoy the generally applicable right under § 363(e) to adequate protection for property subject to their liens. Nothing in the Bankruptcy Code or its legislative history indicates that Congress intended a special exception for the tax collector in the form of an exclusion from the estate of property seized to satisfy a tax lien.

Id. at 209. *See also United States v. Energy Resources Co.*, 495 U.S. 545, 549-50 (1990) (bankruptcy court's exercise of

equitable powers did not "conflict with the Code's provisions protecting the Government's ability to collect delinquent taxes," because the result sought by the government was "an added protection not specified in the Code itself.").

Given the legislative history of the Bankruptcy Code, and Congress' inclusion of specific burdens of persuasion elsewhere in the Code, Congress' silence on the applicable burden of persuasion in claim objection proceedings should not be interpreted as a decision by Congress to depart from established practices under the Bankruptcy Act. *Cohen v. De La Cruz*, 523 U.S. 213, 221 (1998) ("We, however, 'will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure....'"); *Pennsylvania Dep't of Public Welfare v. Davenport*, 495 U.S. 552, 563 (1990) (same). Had Congress intended to depart from this Court's determinations that "governmental claims [are] to be proved in the same manner and within the same time as other debts", *City of New York v. Saper*, 336 U.S. 328, 332 (1949), and that tax debts had been "assimilat[ed] ... to the status of other debts in bankruptcy [and were] clothed with the characteristics of other bankruptcy debts", *Nicholas v. United States*, 384 U.S. 678, 682 n.10 (1966), and had Congress wanted to change the pre-Code practice of allocating the burden of persuasion to taxing authorities, "one would expect Congress to have made unmistakably clear its intent," *Cohen v. De La Cruz*, 523 U.S. 213, 222 (1998), rather than relegate burden of proof issues to the Bankruptcy Rules. *Midlantic Nat'l Bank v. New Jersey Dep't of Envtl. Prot.*, 474 U.S. 494, 501 (1986) ("The normal rule of statutory construction is that if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific. The Court has followed this rule with particular care in construing the scope of bankruptcy codifications."); *United Savs. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 380 (1988) ("If it is at all relevant, the legislative history tends to subvert rather than support petitioner's thesis, since it contains not a hint that § 362(d)(1) entitles the undersecured

creditor to postpetition interest. Such a major change in the existing rules would not likely have been made without specific provision in the text of the statute... it is most improbable that it would have been made without even any mention in the legislative history.").

The pre-Code practice of affording tax claims the same treatment as other claims (in the absence of specific statutory provisions to the contrary) generally has been continued by the Court in cases decided under the Bankruptcy Code. The practice of treating tax claims like other claims sometimes works to the advantage of the taxing authority, sometimes not. In *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235 (1989), the Court held that, like any other creditor, the IRS was entitled to post-petition interest on an over-secured tax lien under section 506(b) of the Bankruptcy Code. 11 U.S.C. § 506(b). Seeing "no reason why a different result should obtain when the IRS is the creditor", the Court in *United States v. Whiting Pools, Inc.*, 462 U.S. 198 (1983), found that "[n]othing in the Bankruptcy Code or its legislative history indicates that Congress intended a special exception for the tax collector in the form of an exclusion from the estate of property seized to satisfy a tax lien." *Id.* at 209.

The established practice under the Bankruptcy Act, the absence of any language in the Bankruptcy Code or its legislative history indicating that Congress intended to deviate from that practice, and the Court's treatment of tax claims under the Code in a manner consistent with the treatment of the claims of other creditors, support the conclusion that taxing authorities should bear the same burden of persuasion as other creditors in claim objection proceedings.

II.

THE *ERIE* DOCTRINE DOES NOT APPLY, AND POLICIES UNDERLYING THE BANKRUPTCY CODE MANDATE A UNIFORM ALLOCATION OF THE BURDEN OF PERSUASION IN CLAIM OBJECTION PROCEEDINGS

The Court has often been called upon to determine various standards and procedures under the Bankruptcy Act and the Bankruptcy Code that had not been specifically addressed by Congress:

> Congress has often left the exact scope of summary proceedings in bankruptcy undefined, and this Court has elsewhere recognized that in the absence of congressional definition this is a matter to be determined by decisions of this Court after due consideration of the structure and purpose of the Bankruptcy Act as a whole, as well as the particular provisions of the Act brought in question.

Katchen v. Landy, 382 U.S. 323, 328 (1966). This is one of those times.

The allowance or disallowance of a tax claim (or any claim) in a bankruptcy estate is fundamentally different from the adjudication of the underlying tax liability in the absence of a bankruptcy proceeding. *Wiswall v. Campbell*, 93 U.S. 347, 350 (1876). Outside of bankruptcy, the only parties to the adjudication of a tax liability are the taxing authority and the taxpayer. The interests of other parties are not at stake and any impact on other creditors of the taxpayer is incidental at best. Once the taxpayer becomes a debtor in bankruptcy, however, the dispute is no longer solely between the taxing authority and the debtor. Rather, the primary battle is

between the taxing authority and the debtor's other creditors[8] as they vie for a share of a limited pool of assets that make up a bankruptcy estate.[9] Courts adjudicating tax claims outside of bankruptcy are not confronted with "the special bankruptcy problems of uniformity, ratable distribution and fairness and equity which grow out of the context of the bankruptcy law." *Vanston Bondholders Protective Comm. v. Green*, 329 U.S. 156, 165 n.9 (1946). Thus, the considerations that determine state law burdens of persuasion that govern resolution of tax liabilities outside of bankruptcy — where only the taxing authority and the taxpayer are interested parties — should not apply to the adjudication of objections to the allowance of tax claims under section 502 of the Bankruptcy Code.

Diversity jurisdiction does not bring into federal court objections to the allowance of tax claims in bankruptcy estates — federal question jurisdiction does. Accordingly, and contrary to the court of appeals' reasoning, bankruptcy courts are not bound under *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938), to apply state law burdens of persuasion to claim objection proceedings under section 502 of the Bankruptcy Code. *Vanston Bondholders Protective Comm. v. Green*, 329 U.S. 156 (1946).

---

[8] Creditors, as "parties in interest", 11 U.S.C. § 502(a), have standing to file objections to claims filed by other creditors.

[9] Claims are not filed against the debtor but filed against the assets of the bankruptcy estate. "The Bankruptcy Act...converts the creditor's legal claim into an equitable claim to a pro rata share of the *res*." *Katchen v. Landy*, 382 U.S. 323, 336 (1966). *See also Gardner v. New Jersey*, 329 U.S. 565, 574 (1947) ("The whole process of proof, allowance, and distribution is, shortly speaking, an adjudication of interests claimed in a res."); *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 57 (1989) ("Our decision [in *Katchen*] turned, rather, on the bankruptcy court's having 'actual or constructive possession' of the bankruptcy estate, ... and its power and obligation to consider objections by the trustee in deciding whether to allow claims against the estate."); *Local Loan Co. v. Hunt*, 292 U.S. 234, 241 (1934) ("[G]enerally, proceedings in bankruptcy are in the nature of proceedings in rem....").

In *Vanston*, the indenture trustee on the debtor's first mortgage bonds sought interest on interest on its secured claim pursuant to the language of the indenture. 329 U.S. at 159. Because allowing interest on interest would greatly reduce the amount paid to subordinate creditors, the creditors lodged a challenge. *Id.* The indenture trustee argued that the claim to interest on interest was valid and enforceable under applicable non-bankruptcy law and, therefore, must be allowed in the bankruptcy estate. *Id.* at 160. The Court disagreed:

> A purpose of bankruptcy is so to administer an estate as to bring about a ratable distribution of assets among the bankrupt's creditors. What claims of creditors are valid and subsisting obligations against the bankrupt at the time a petition in bankruptcy is filed, is a question which, in the absence of overruling federal law, is to be determined by reference to state law....But we need not decide which, if either, of these two states' laws govern the creation and subsistence and validity of the obligation for interest on interest here involved. For assuming, arguendo, that the obligation for interest on interest is valid under the law of New York, Kentucky, and the other states having some interest in the indenture transaction, we would still have to decide whether allowance of the claim would be compatible with the policy of the Bankruptcy Act.... In determining what claims are allowable and how a debtor's assets shall be distributed, a bankruptcy court does not apply the law of the state where it sits. *Erie R. Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188, 114 A.L.R. 1487, has no such implication....[B]ankruptcy courts must administer and enforce the Bankruptcy Act as interpreted by this Court in accordance with authority granted by Congress to determine how and what claims shall be allowed under equitable principles. And we

> think an allowance of interest on interest under the circumstances shown by this case would not be in accord with the equitable principles governing bankruptcy distributions.

Id. at 161-63. *See also Heiser v. Woodruff*, 327 U.S. 726, 732 (1946) ("For nothing decided in *Erie R. Co. v. Tompkins*, supra, requires a court of bankruptcy, in applying the statutes of the United States governing the liquidation of bankrupts' estates, to adopt local rules of law in determining what claims are provable, or to be allowed, or how the bankrupt's estate is to be distributed among claimants."); *Local Loan Co. v. Hunt*, 292 U.S. 234, 244-45 (1934) ("We find it unnecessary to consider this contention ... since we are of the opinion that it is precluded here by the clear and unmistakable policy of the Bankruptcy Act.... [W]e reject the Illinois decisions as to the effect of an assignment of wages earned after bankruptcy as being destructive of the purpose and spirit of the Bankruptcy Act.").

The Court's decision in *Grogan v. Garner*, 498 U.S. 279 (1991), sheds further light on the interplay between state and federal burdens of proof in claim objection proceedings. The question in *Grogan* was whether a creditor had to prove fraud by clear and convincing evidence or by a preponderance of the evidence in order to have its claim excepted from the debtor's discharge under section 523(a) of the Bankruptcy Code. 11 U.S.C. § 523(a). While the Court cited *Vanston* as support for the proposition that "[t]he validity of a creditor's claim is determined by rules of state law," *id.* at 283, the Court determined that the question whether the claim was excepted from discharge under section 523(a) of the Bankruptcy Code was a question of federal law to which federal burdens of proof applied. *Id.* at 284. So too in the instant case. While state law burdens of persuasion govern the validity of the Department's claim outside of bankruptcy, the question of the allowance of that claim under section 502 of the Bankruptcy Code is a question of federal law to which federal burdens of persuasion should apply. *Citizens Bank of*

Maryland v. Strumpf, 516 U.S. 16, 19 (1995) ("But even if state law were different, the question whether a setoff *under § 362(a)(7)* has occurred is a matter of federal law.").

The Court's decisions in *United States v. Whiting Pools, Inc.*, 462 U.S. 198 (1983), *United States v. Noland*, 517 U.S. 535 (1996), *United States v. Reorganized CF & I Fabricators of Utah, Inc.*, 518 U.S. 213 (1996), and *Butner v. United States*, 440 U.S. 48 (1979), relied upon by the court of appeals, do not dictate a different result.

In *Whiting Pools*, the Court specifically declined to grant the IRS special treatment that was not provided for in the Bankruptcy Code:

> Nothing in the Bankruptcy Code or its legislative history indicates that Congress intended a special exception for the tax collector in the form of an exclusion from the estate of property seized to satisfy a tax lien.

462 U.S. at 209. *Noland* involved the ability of a bankruptcy court to equitably subordinate a class of claims in derogation of the specific priority schemes established by Congress. There is no express statutory provision dealing with the allocation of the burden of persuasion in claim objection proceedings, and placing the burden of persuasion on the Department does not deprive the Department of any entitlements "provided by the Bankruptcy Code itself." (Pet. App. A9). In *Reorganized CF & I Fabricators*, the Court held that a claim filed by the government under 26 U.S.C. § 4971(a) for a 10% "tax" on pension plan underfunding was not entitled to priority treatment as an "excise tax" under 11 U.S.C. § 507(a)(7)(E). The Court found that characterization of the claim as a "tax" claim under non-bankruptcy law did not mandate treatment of the claim as a "tax" claim under section 507(a)(7)(E) of the Bankruptcy Code. 518 U.S. at 224. Similarly, in the instant case, the state law burden of persuasion governing adjudication of tax liabilities outside of bankruptcy does not dictate the burden of persuasion that

should apply to adjudication of objections to the allowance of tax claims under section 502 of the Bankruptcy Code.

In *Butner*, the Court held that whether the lien created by a mortgage extends to rents and profits from the encumbered property was a matter of state law. 440 U.S. at 56. The Court reasoned that "[u]nless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding." *Id.* at 55. In the instant case, the issue before the Court is not the determination of a creditor's property interest in specific assets of the bankruptcy estate. Given the Court's statements in *Vanston* that allowance of claims under section 502 of the Code is a matter of federal law to which the *Erie* doctrine does not apply, the bankruptcy court is not bound to apply state law burdens of persuasion.

Pursuant to the general principle that "burden of proof allocations are governed by principles of fairness, common sense and logic," *First National Bank of Louisville v. Hurricane Elkhorn Coal Corp. II*, 763 F.2d 188, 190 (6th Cir. 1985) (*citing* 9 J. Wigmore, *Evidence in Trials at Common Law*, § 2486 at 290 (rev. ed. 1981)), the burden of persuasion on the adjudication of an objection to the allowance of a claim under section 502 of the Bankruptcy Code should be allocated in a manner that is consistent with federal policies underlying the Code. One of the fundamental policies underlying the Bankruptcy Code is "equality of distribution among creditors". *Union Bank v. Wolas*, 502 U.S. 151, 161 (1991) (quoting H.R. Rep. No. 95-595, at 177-78 (1978), *reprinted in* 1978 U.S.C.C.A.N. 6137-38). *See Young v. Higbee Co.*, 324 U.S. 204, 210 (1945) ("[H]istorically one of the prime purposes of the bankruptcy law has been to bring about a ratable distribution among creditors of a bankrupt's assets; to protect the creditors from one another."); *Begier v. Internal Revenue Service*, 496 U.S. 53, 58 (1990) (creditors of equal priority should receive ratable shares of the assets of the estate). *See also In re Schimmelpenninck*, 183 F. 3d 347, 351

(5th Cir. 1999) ("the interests of all creditors ... are to be put on a level playing field with like–situated claimants being treated equally").

The Bankruptcy Code's fundamental goal of equality of treatment of creditors is put at risk if one class of creditors – and indeed, a class of creditors whose claims are often granted priority status – is given the benefit of a favorable presumption that is unavailable to other creditors.[10] *In re Wilhelm*, 173 B.R. 398, 402 (Bankr. E.D. Wis. 1994). When the burden of proof is placed on the objecting party, tax claims are not "treated the same as other debts for all purposes," *City of New York v. Saper*, 336 U.S. 328, 332 (1949), and tax claims are not "assimilated ... to the status of other debts in bankruptcy...[and] clothed with the characteristics of other bankruptcy debts." *Nicholas v. United States*, 384 U.S. 678, 682 n.10 (1966).

---

[10] Policy reasons typically given for allocating the burden of persuasion to taxpayers outside of bankruptcy -- to encourage record keeping and because the debtor has better knowledge of its own financial affairs and better access to relevant evidence, *Psaty v. United States*, 442 F.2d 1154, 1160 (3d. Cir. 1971) -- are not disserved by placing the burden of persuasion on taxing authorities in a bankruptcy proceeding. Under the Code, individual debtors who do not maintain adequate records or who fail to turn over records may be denied a discharge. 11 U.S.C. §§ 727(a)(3), 727(a)(4)(D). A debtor's failure to maintain adequate books and records is also one of the factors considered by bankruptcy courts in determining whether "cause" exists for the appointment of a Chapter 11 trustee under section 1104 of the Code, 11 U.S.C. § 1104. *See In re Paolino*, 53 B.R. 399, 401 (Bankr. E.D. Pa. 1985) ("Due to the importance of this duty courts have held that when current management has failed to keep accurate financial records prior to the filing of the petition or has failed to file with the court the requisite operating statements after the filing of the petition, cause for the appointment of a trustee under §1104(a)(1) is present."), *aff'd*, 60 B.R. 828 (E.D. Pa. 1986). Moreover, objecting creditors, trustees, or creditors' committees often have no better understanding of the debtor's finances and no better access to crucial evidence than does the taxing authority. Finally, if the objecting party cannot proffer sufficient evidence to rebut the presumption of validity of the taxing authority's proof of claim, the claim will be allowed.

The taxes sought by the Department were exempt from the debtor's discharge under section 523(a)(1) of the Code, 11 U.S.C. § 523(a)(1). The Department could have sought payment of those taxes from Stoecker personally outside of the bankruptcy proceeding without ever having filed a proof of claim. *Id.* By filing a proof of claim in the bankruptcy estate, however, the Department has sought to satisfy its claim out of the assets of the estate, has subjected itself to the equitable jurisdiction of the bankruptcy court,[11] and is subject to the rules and procedures that govern all creditors:

> It is traditional bankruptcy law that he who invokes the aid of the bankruptcy court by offering a proof of claim and demanding its allowance must abide the consequences of that procedure.... When the State becomes the actor and files a claim against the fund it waives any immunity which it otherwise might have had respecting the adjudication of the claim.

Gardner v. State of New Jersey, 329 U.S. 565, 573 (1947) (citing *Wiswall v. Campbell*, 93 U.S. 347, 351 (1876)). *See also Langenkamp v. Culp*, 498 U.S. 42, 44 (1990); *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 58 & n.14 (1989); *Alexander v. Hillman*, 296 U.S. 222, 241 (1935); *New York v. Irving Trust Co.*, 288 U.S. 329, 333 (1933).

In *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235 (1989), the Court reaffirmed its decision in *Vanston* that the

---

[11] Bankruptcy courts are "essentially courts of equity, and their proceedings inherently proceedings in equity," *Local Loan Co. v. Hunt*, 292 U.S. 234, 240 (1934), and "the expressly granted power to 'allow', 'disallow' and 'reconsider' claims ... is of 'basic importance in the administration of a bankruptcy estate....'" *Katchen v. Landy*, 382 U.S. 323, 329 (1966) (quoting *Gardner v. State of New Jersey*, 329 U.S. 565, 573 (1947)). The ability of a bankruptcy court as a court of equity to adjudicate objections to claims includes "full power to inquire into the validity of any alleged debt or obligation of the bankrupt upon which a demand or claim against the estate is based." *Lesser v. Gray*, 236 U.S. 70, 74 (1915). *See also* 28 U.S.C. § 157(b)(2)(B) ("allowance or disallowance of claims against the estate" is a core proceeding).

"touchstone of each decision on allowance of interest in bankruptcy ... has been a balance of equities between creditor and creditor or between creditors and the debtor." *Id.* at 248 (*citing Vanston Bondholders Protective Comm. v. Green*, 329 U.S. 156, 165 (1946)). That same "balance of equities between creditor and creditor[s]" is at work when a bankruptcy court is called upon to adjudicate an objection to the allowance of a priority tax claim under section 502 of the Bankruptcy Code. Every other creditor who files a claim in a bankruptcy estate — including creditors holding claims in the seven categories of priority claims that enjoy higher statutory priorities than tax claims — bears the burden of persuasion on its claim. In order to balance the equities between taxing authorities and other creditors, taxing authorities should shoulder the same burden of persuasion as other creditors to establish their claims.

CONCLUSION

For the reasons stated above, petitioner respectfully requests that the judgment of the court of appeals be reversed.

Robert Radasevich*
Two North LaSalle Street
Chicago, Illinois 60602
312-269-8000
Attorney for Petitioner

**Counsel of Record*

Of Counsel:
Phil C. Neal
David A. Eide
John W. Guarisco
Neal, Gerber & Eisenberg
Two North LaSalle Street
Chicago, IL 60602
312-269-8000